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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,970	12/27/2000	Ralph M. Martin	RM393a	5888

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/748,970	Applicant(s) Martin et al.
Examiner Vanaman	Art Unit 3618



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jul 22, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-5, 8-11, 14-17, and 20 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 2 and 14-17 is/are allowed.

6) Claim(s) 1, 3-5, 8-11, and 20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on Jul 22, 2002 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9

6) Other: _____

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Status of Application

1. Applicant's amendment, filed July 22, 2002, has been entered in the application. Claims 1-5, 8-11, 14-17 and 20 are pending, claims 6, 7, 12, 13, 18 and 19 having been canceled.

Information Disclosure Statement

2. Applicant's information disclosure statement, filed July 26, 2002, is noted. The examiner notes that a number of references cited in applicant's I.D.S. are duplicates of references which were cited in the previous office action (Paper No. 8). These references have been lined-through and indicated as being 'not considered' as they are redundant in view of their having been already cited.

Claim Rejections - 35 USC § 112

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4, line 11, it is not clear whether or not the rigid member or the anchors is/are controlled by the actuator.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3, 4, 5, 8, 9, 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camp (cited previously) in view of Emilson (cited previously). Camp teaches a binding device for a ski (14) including a track comprising a flat rigid member (34, 28, 16) which slides within a retainer device (32) having forward and rearward tab-shaped anchors for connection to the ski (see figures 2 and 4, portion 34 of the track being located between the front and rear tab-shaped anchors of 32), the track for receiving a ski binding member (12, 16); a

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remote transmitter (22) located within a ski pole (figure 5) and including a both main and safety switches (112, 96), wherein both switches must be engaged in order to operate the transmitter, a receiver (24) mountable on the ski and having a linear actuator (solenoid 62) connected through a linkage to the track, the remote transmitter activating the receiver to cause movement of the track and a lengthening of the distance between the heel binding piece (see page 5, line 21) and toe binding piece (12); the mechanism including a piston or shaft portion (end of 36) which is spring loaded (50), the piston having a locking groove (54) which is engaged with a pivotally mounted locking pin (portion 52 of member 56, see figure 3), the receiver operating an electronic trigger (80, 82) which operates the solenoid, the spring (50) being set or cocked by a lever (42) pivotally mounted to the ski (14) by a wedge-shaped element (pivotal end of 42), as broadly claimed. The reference of Camp fails to teach the main spring as being located in the housing.

Emilson teaches a release device (10, 18) for a ski binding, wherein a main spring (42) is located internally of a housing (32). It would have been obvious to one of ordinary skill in the art at the time of the invention to locate the main spring of Camp inside a housing as suggested by Emilson for the purpose of preventing damage to the spring, and to protect it from the ambient elements common to a skiing environment, thus lengthening the lifespan of the spring.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Camp in view of Emilson and Rohrmoser (cited previously). The references of Camp and Emilson are discussed above and fail to teach the toe piece, heel piece, track and actuator as being mounted on a mounting plate having a hole for mounting to a ski. Rohrmoser teaches a release system for a ski boot where the entire binding and actuator device is housed on a mounting plate 5) which includes at least one aperture for a screw (12) for mounting the assembly to a ski (2). It would have been obvious to one of ordinary skill in the art at the time of the invention to mount the entire track toe and heel piece of the binding system of Camp as modified by Emilson on a mounting plate which

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may be attached to a ski for the purpose of allowing the binding assembly to be quickly and simply attached to a ski, facilitating a reduction in assembly time.

Allowable Subject Matter

7. Claims 2, 14, 15, 16 and 17 are allowed.

Response to Arguments

8. Applicant's arguments, filed with the amendment, have been carefully considered. As regards the reference to Camp and the provision of a spring inside the main housing, the examiner agrees that Camp fails to teach this feature explicitly, however in view of the reference to Emilson teaching that it is well known to locate a spring inside a housing (as opposed to simply leaving the spring open to the elements), it is not considered to be beyond the skill of the ordinary practitioner to modify the reference to Camp for the purpose of locating the spring internally of the housing.

Applicant's comments directed to the simplification of an invention are noted, however the reference to Camp as modified by Emilson, teaches the recited elements to the breadth that they are claimed. Further, the examiner has not suggested that it would be necessary to remove elements from Camp in order to meet the limitations of the claims as they are currently recited.

Applicant's comments suggesting that the requirement of a suggestion for combination must be found in a reference are noted, but are confusing, as the text as cited by applicant from *In re Kotzab* clearly refers to three different sources for the suggestion: (1) the combined teachings, (2) the knowledge of the ordinary practitioner and (3) the nature of the problem to be solved.

Furthermore, a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference (see *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)), with skill being presumed on the part of the artisan, rather than the lack thereof (see *In re Sovish*

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769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985)); further, references may be combined although none of them explicitly suggests combining one with the other (see *In re Nilssen* 7 USPQ2d 1500 (Fed. Cir. 1989)).

Please further note the following from Section 2144 of the MPEP: “The rationale to modify or combine the prior art does not have to be expressly stated in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent...The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem...It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by Applicant.” Also Chief Judge Nies writes in a concurring opinion, “While there must be some teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed device, it is not necessary that the cited references or the prior art specifically suggest making the combination...In sum, it is off the mark for litigants to argue, as many do, that an invention cannot be held to have been obvious unless a suggestion to combine prior art teachings is found in a specific reference”. See *In re Oetiker* 977 F.2d 1443, 24 USPQ.2d 1443 (Fed.Cir.1992).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

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1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is (703) 308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Assistant Commissioner for Patents
Washington, DC 20231

or faxed to :

(703) 305-3597 or 305-7687 (for formal communications intended for entry;
informal or draft communications may be faxed to the same number but should be
clearly labeled "UNOFFICIAL" or "DRAFT")

The Office has also established electronic fax servers for Technology Center 3600 as follows:

703-872-9326 (Official communications)
703-872-9327 (Official After Final communications)
703-872-9325 (Customer Service)

**F. VANAMAN
Primary Examiner
Art Unit 3618**

F. Vanaman
November 22, 2002

A handwritten signature in black ink, appearing to read "F. VANAMAN" above a date like "11/22/02".